



STATED MINUTES

City of Crosslake Planning Commission/Board of Adjustment

September 25, 2020
9:00 A.M.

Crosslake City Hall
13888 Daggett Bay Road
Crosslake, MN 56442

1. Present: Chair Mark Wessels; Vice-Chair Mark Lindner; Randy Dymoke; Bill Schiltz; Jerome Volz; Kristin Graham, alternate and Liaison Council Member Aaron Herzog
2. Absent: None
3. Staff: Jon Kolstad, Planning & Zoning Administrator and Cheryl Stuckmayer, Planner-Zoning Coordinator
4. 7-24-2020 Minutes & Findings – **Motion by Lindner; supported by Volz to approve the minutes & findings as written. All members voting “Aye”, Motion carried.**
5. Old Business-Variances are heard on their individual requests, past variances hold no precedents. Commissioners may table the request if needed and an applicant can withdraw their request. If the variance(s) is/are approved, all existing nonconformities will be eliminated and will hereafter be required to follow the variance decision. If a variance is denied the applicant can rebuild the nonconformity as is per the Crosslake Ordinance.
 - 5.1 None
6. New Business
 - 6.1 City of Crosslake Fire Department – Variance for structure height
 - 6.2 Brady J & Kimberly A Day –Variance for bluff setbacks, a lake setback, retaining walls, dirt, and water oriented accessory structure size
7. Other Business
 - 7.1 Staff report
8. Open Forum – No action will be taken on any of the issues raised. If appropriate, the issues will be placed on the agenda of a future PC/BOA meeting. Speakers must state their name and address. Each speaker is given a three minute time limit.
9. Adjournment

**Crosslake Fire Department
14090655 thru 14090660**

Wessels announced the variance request. Kolstad read the variance request, project details, no comments or inquiries received, and the location of the request in relation to the existing structure into the record. Lohmiller, the fire chief, was invited to the podium. Lohmiller stated the training tower/hose storage addition was approved on the plan for the new fire facility. Lohmiller stated the hoses are 50 feet long and the requested height will allow for the hanging of the hose to be dried. Lohmiller stated the school gym and the Senior Living Facility in Crosslake had an approved height variance. Lindner questioned that if the hose hangs in half why the need for the additional height. Lohmiller explained the hose hanging process. Wessels asked if any other fire departments in Crow Wing County had a tower with Lohmiller stating that Pine River and Crosby has a tower and there may be others. Lohmiller explained that the life expectancy of a hose on the current drying method is shortened versus using a tower. Lohmiller stated most fire towers are taller and they are located in small towns also; he would be willing to get pictures of these locations. Lohmiller explained that there are three reasons to approve the variance: 1. the fire department/city would save money in the long run by having a tower to hang the hoses to dry in because the hoses would last longer and not fail as soon; 2. safety and training here in the city instead of out in the field – to take the crew out of the jurisdiction to train would leave the area uncovered – do not have the manpower to train and have coverage; 3. train here with other communities if the city council approves – he would not be the instructor, it would be a conflict of interest. Wessels stated his concern of having the tower so close to the helipad and would like a letter from helicopter business stating no concerns. Lohmiller stated that the helipad has been taken into consideration and discussed with it being moved 5-10 feet and he will acquire a letter from North Memorial Air Care. Lindner feels it would be a benefit to our community and an exception should be granted. Wessels asked if any of the commissioners had additional questions, but none were forthcoming. Wessels opened the public hearing. Andrews of 11316 Manhattan Pt Blvd said he grew up in a town that was no busier than this community and they had a tower for the fire department. No others were forthcoming so the public hearing was closed. Wessels stated that he hopes that there are no more height variance request coming up with people in the community saying they would like to keep the up-north feel.

Wessels requested Kolstad to initiate the findings of fact procedure with the board members deliberating and responding to each question.

September 25, 2020 Action:

Motion by Lindner; supported by Schiltz to approve the variance for:

- Structure height of 45 feet where 30 feet is allowed

To construct:

- 320 square foot, 3 story Training Tower/Hose Storage addition, to be a maximum of 45 feet high or less where 30 feet is allowed

Per the findings of fact as discussed, the on-site conducted on 9-25-2020 and as shown on the site plan/building specifications received at the Planning & Zoning office for property located at 37028 County Road 66, City of Crosslake

Conditions:

Chapter 26 – Land Use; Sec. 26-227 Variance Decision - Variances must be substantially completed

within two years of receiving approval – the approval of this variance will expire on 9-25-2022

- 1. A letter from the appropriate authorities that use the helipad, stating the tower height will not alter the use of the helipad**

Findings: See attached

Schiltz, Dymoke and Lindner voting “Aye”; Wessels and Volz voting “Opposed”; three to two, Motion carried.

**Brady J & Kimberly A Day
14080610**

Wessels announced the after-the-fact variance request. Kolstad read the variance request, project details, 3 comments received, stormwater management plan, compliant septic compliance inspection, and the below timeline/violations list into the record.

Timeline

- 4/23/2020 Completed Shoreland Alteration application received in Office
- 4/24/2020 Staff visited site and approved application, gave approved permit to Mrs. Day. The permit was specifically for a 120 sq ft WOAS MAX (see APPROVED Land Use Permit and Yellow card in window)
- 5/18/2020 received call from Builder that Footing Inspection would be needed on 5/20/2020 explained Staff would not be available on that day due to a medical appointment.
- 5/20/2020 Work began on site. Staff unable to conduct inspection due to medical appointment. Received text message from City Clerk asking if Day can start – answered ‘Yes’
- 6/22/2020 visited site to check WOAS Issued STOP WORK ORDER on WOAS and BLUFF
- 6/25/2020 Day’s submitted application for DRT
- 7/13/2020 DRT meeting
- 8/7/2020 Variance Application submitted

List of violations

1. WOAS 239 sq ft where 120 is allowed
2. WOAS 18-ft from OHW where 20-ft is allowed
3. Replaced Stairs in SIZ 1 without permit
4. Dirt moving >10 cu yds in SIZ2 without permit
5. Dirt moving >50 cu yds in SIZ2 without CUP
6. Dirt Moving in Bluff without Variance
7. Patio installation in Bluff without Variance
8. Patio installation in Bluff without permit
9. Walkway installation in bluff without Variance
10. Walkway installation in bluff without permit
11. Retaining walls in bluff without Variance
12. Retaining walls in bluff without permit
13. Retaining walls exceed 4-ft high, without engineered plan.

Whether or not a footing inspection can be accomplished it is ultimately the Property owner’s responsibility to ensure they are following the Land Use Ordinance and the permit that was issued.

PC/BOA courses of action

1. Approve the After-the-Fact variance and allow everything they have done to remain and be used.
2. Require the WOAS to meet the size limit of 120 sq ft and the 20-ft setback from the OHW.
3. Remove the new firepit patio and walkways.
4. Vegetate the bluff area with woody vegetation covering 85% of the ground area,
5. Make the bluff area a no-mow area from the top to the bottom of the bluff.

6. Restoration of the bluff would not be necessary as it may cause erosion issues. Require area to remain vegetated and a no-mow/no-go area in perpetuity.
7. Require an independent engineer review the bluff area to assess the retaining wall(s) integrity and develop a Stormwater Management Plan for the lakeside of the property (house to OHW). This would include the bluff area and the area around the WOAS – specifically taking into account the retaining walls alongside of the WOAS.
8. Some combination of #1 through 7 above.
9. Require WOAS reduction, engineered SWMP and restoration/vegetation of bluff to occur no later than **10/31/2020**.
10. Require payment of any fines assessed for the violation by **10/31/2020**.

Potential Fines discussed with City Attorney

1. Enforcement of the Administrative fines from the day work began on 5/20/2020 thru 10/31/2020 (Restoration)
 - (13 violations x 164 days x \$75 = \$159,900)
2. Enforcement of the Administrative fines from the day work began on 5/20/2020 thru 6/22/2020 (Stop work date)
 - (13 violations x 29 days x \$75 = \$28,275)

Wessels stated with Kolstad clarifying that the bluff regulations came into effect in 1998 state wide and all Minnesota contractors should know the requirements within a bluff. Wessels also stated that the 120 square foot size requirement of a water-oriented accessory structure (WOAS) is county wide and has been in place in Crosslake since 2014. Wessels mentioned the footing location inspection with Kolstad stating that it is the homeowner's responsibility to make sure they are following the approved permit and the city's ordinance. Wessels invited the Days up to the podium. Day stated it was never the intention to not follow the requirements. See Exhibit A attached below for the letter that Day read at the public hearing. Day stated at the start of the project they looked up the state requirement size for the WOAS and Jon did tell them the correct size, but it was not communicated to the contractor. Day said it was not the intention to change the size but tried for an appointment with Jon and he was out of town. Day received an ok to go ahead but there was some miscommunication. Day stated it was naive of us to think we were just replacing and improving. Volz asked if they had contacted a landscaping company in the area to see if it was ok to do what you were planning. Day stated that they contacted two companies and they did not say that they couldn't do it because of a bluff. Wessels stated that you had a survey and knew it was a bluff with Day replying in the positive. Volz said that being a commissioner he receives phone calls and he heard a different version of your contact with the two landscaping companies. Lindner stated that he felt the patio under the deck was fine due to it was already there and basically was just replaced. Lindner said he did not understand why the WOAS was constructed bigger then the permit. Schiltz recused himself due to association with the applicates. Kolstad stated there was no discussion at the time of the permit or at the site visit about anything but the WOAS. Lindner asked if two stairways were allowed with Kolstad replying only one and the existing could have been repaired/replaced with a permit. Wessels opened it up to the public. Wolff of 37784 Forest Lodge Rd asked if a previous variance had been applied for and Kolstad replied no there were none. Wessels closed the public hearing. Wessels said that a 10x12 WOAS was planned and the materials ordered, not an easy mistake to let go. The rules said no activity in the bluff so you moved it over off the bluff, it is hard to overlook. Wessels stated some history of the planning and zoning ordinance with the county and the public giving a 90% approval rating on how easy it is to work with the Crosslake staff. Wessels explained that the bluff runoff can be very detrimental to

property, the land and the lake. Wessels asked Day to hire an engineer to propose methods to stabilize the bluff with a plan for maintaining it for now and the future – if ok to remove then so be it. Lindner agrees but does planning and zoning know an engineer that is locally knowledgeable. Lindner stated that the grass on the bluff should be replaced with woody vegetation. Kolstad added that at the 9-24-2020 on-site meeting the discussion was to have 75% woody vegetation in perpetuity. Kolstad stated that he talked to the city attorney on a possible fine from the start of construction up to the stop work order which would be 29 days times 13 violations times \$75/day/violation would be \$28,275.00. Kolstad stated that the ordinance requires an engineered plan if a retaining wall is over 4 feet in height. A discussion was held on possible fine(s), the WOAS to meet the city ordinance, bluff area to be a no mow area, and demoing the walkways. Herzog, city council liaison, stated that the engineer report and the review by the city engineer along with the commission decision should happen soon so that some things could be done this fall to prevent any erosion issues. Commissioners discussed tabling this request to have the owners obtain a capable engineer for a report that would be approved by the city engineer for the commissioners to evaluate before making a motion. This is a summary of the requirements based upon the discussion regarding the after-the-fact variance requests. The Planning Commission/Board of Adjustment tabled the application until Day, the owner, provides an engineer's report on the following:

Submit an engineer report regarding the following, no later than 10/14/2020

Concerns –

- Stabilization of the bluff to last 20 to 30 year vs removal of rock retaining walls
- Stability and integrity of the retaining walls (exceed 4-ft in height)- do they need to be anchored vs removal/additional stabilization?
- Ongoing maintenance plan to keep bluff stable (maintained in perpetuity)
- Removal of 50% of the Water Oriented Accessory Structure (WOAS) (120 sq ft max) + meet 20-ft setback from OHW vs leaving as-is?
 - o Stabilization of the area around the WOAS – Retaining walls not to exceed 4-ft without an engineered plan + SWMP
- Engineered Stormwater Management Plan (SWMP) for the entire property – focus on dwelling Roof and Lakeside of the dwelling. Must accommodate a 1-in rain event + hold up to a 3-in rain event (per the city land use ordinance)

Contact P&Z staff no later than 10/7/2020 with engineering firm that was hired and any problems with meeting the 10-14-2020 deadline.

City Engineer will review and determine viability of SWMP and stability of retaining wall & WOAS reports.

Property owners will return to the 10/23/2020 Planning Commission meeting to continue the after-the-fact variance hearing.

September 25, 2020 Action:

Motion by Wessels; supported by Lindner to table the after-the-fact variance for:

- Size of water oriented accessory structure of 239 square feet where 120 square feet is allowed
- Lake setback of 18 feet where 20 feet is required to the water oriented accessory structure (WOAS)
- Bluff setback for a patio of 326 feet where none is allowed
- Bluff setback for a fire pit patio of 264 square feet where none is allowed
- Bluff setback for an additional walkway of 214 square feet where one walkway is allowed

- Bluff setback for an additional walkway of 85 square feet where one walkway is allowed
- Retaining walls in the bluff impact zone where none are allowed
- Dirt moving of 82 yards within a bluff impact zone where none are allowed

To continue use of:

- 239 square foot WOAS where 120 square feet is allowed
- 239 square foot WOAS 18 feet from OHW where 20 feet is required
- 326 square foot patio within the bluff impact zone where none is allowed
- 264 square foot fire pit patio within the bluff impact zone where none is allowed
- 214 square foot walkway within the bluff impact zone where one walkway is allowed
- 85 square foot walkway within the bluff impact zone where one walkway is allowed
- Retaining walls in the bluff impact zone where none are allowed
- Dirt moving of 82 yards within a bluff impact zone where none are allowed

Per the findings of fact as discussed, the on-site conducted on 9-24-2020 and as shown on the certificate of survey received at the Planning & Zoning office dated 8-20-2020 for property located at 37916 Forest Lodge Rd, City of Crosslake

Findings: See attached

All members voting “Aye”, Motion carried. (Schiltz recused himself and did not vote)

Exhibit A

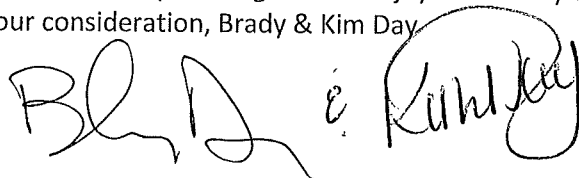
Thank you for taking time to walk through our property. We would like to reiterate and make very clear that it was never our intention to evade the City of Crosslake's shoreline/bluff & WOAS ordinances. When we created a plan, we envisioned making changes to improve the function, and safety of our property as we had several deteriorating landscape structures that needed to be addressed. The safety of our 3 children and of our aging parents were top of mind, as well as how the replacements & additions would impact the surrounding environment. We attempted to use Crosslake contractors but had no luck in securing their help in a timely manner as all were extremely busy. We then found outside contractors that worked in the Brainerd Lakes area and were familiar with working on lake properties in Crow Wing County. This was our 1st major project as a new lake homeowner and when we hired our licensed contractors, we believed that all the work they would complete would be done correctly. We applied for the permit for the water orientated storage structure on March 31st at the height of the unprecedented state shutdown & quarantine where businesses were not operating as usual and city officials were working from home. We acknowledge that we were naïve to the additional permits for work occurring in the bluff area and the communication errors of placement and size of the WOAS.

- Replaced existing rotting & deteriorating timber steps with stone steps reducing the total number of steps to the shoreline.
- Replaced existing uneven, settled stone boulder steps to fire pit area with stone steps
- Replaced unsafe sinking boulder walls around fire pit area. Replaced rocks with pavers to prevent continual spillage of rock into mowed areas and to create a safer space around our fire pit.
- Replaced rock beds with mulch beds and added mulch borders with a variety of plants for improved drainage.
- Replaced cracked & broken flagstone, grass and rock walkway with a paver pathway.
- Added a boulder wall to the edge of the bluff to prevent further deterioration and wash out.
- There has always been an existing mowed grass area on the top of the bluff that met up to natural grass area on the side of bluff that experienced wash out down to the shoreline.
- Added additional vegetative buffers that will grow deep strong roots to the side of bluff for added soil stability & to improved drainage.
- Added lighting for safety and security
- Added railings for safety
- WOAS was added to make our property more useful and convenient
- With the addition of the WOAS, replacements and new paver pathway that was completed the impervious surfaces calculation of our property changed by only 0.70% from a total of 6.3% to 7.0%

Remaining planned work that was halted

- Rainwater management with gutters & rain barrel to the WOAS and runoff holding areas.
- Additional boulders and plantings with to side of bluff to further stabilize the bluff and manage runoff.

Since the issues were brought to our attention, by the city on June 22nd, this has been a source of huge stress to our family as we have invested a lot of time, money & emotion into the project. It is our strong belief that we have only improved our property for our family's use & the lakeshore sustainability. We see no harm being done to the lakeshore or the city of Crosslake. It is our long-term plan to retire here and create a home that is a legacy for our children & future grandchildren. We want this property to be the place that is safe for everyone to gather & enjoy the beauty of Crosslake and the Whitefish Chain. Thank you for your consideration, Brady & Kim Day

Handwritten signatures of Brady and Kim Day. The signature on the left is 'Brady' and the signature on the right is 'Kim Day'.

Other Business:

1. Staff report
 - a. Monthly city council report
 - b. Development Review Team (DRT) had 6 September monthly meetings
 - c. Two plus Day's for the October public hearing
 - d. 33' Road vacate to lake on Lake Street – Park & Rec recommended to city council not to approve and Public Works will need to make a recommendation to the city council as well. Planning and Zoning is not involved in this process
 - e. Vet clinic has a permit for an addition
 - f. Enforcement numbers are up this year

Open Forum:

1. Flanagan of 37808 Forest Lodge Rd said she appreciated the commissioner's detail of the Day after-the-fact variance request. Claiming ignorance is not a reason. The bluff is shared by all with repercussions to everyone also. What was done was very disrespectful.
2. Andrews of 11316 Manhattan Point Blvd stated that back in 2012 it was a mentality that you can do whatever you want. You pay a fine, but you get to keep what you did.

Matters not on the Agenda:

1. There were no matters not on the agenda

Motion by Lindner; supported by Volz to adjourn at 11:30 A.M.

All members voting "Aye", Motion carried.

Respectfully submitted,

Cheryl Stuckmayer

Cheryl Stuckmayer
Planner-Zoning Coordinator